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STATE OF ILLINOIS ILLINOIS COMMERCE COMMISSION
C. C. DOCKET NO. 01-0338
Ameritech Direct
EXHIBIT NO. 1

Petition for Arbitration to Establish an
Interconnection Agreement Between
TDS Metrocom, Inc. and Illinois Bell, Inc.,
d/b/a Ameritech Illinois

Witness Michael Silver
Date 6-21-01 Reporter JT

Docket No. 01-0338

CORRECTED DIRECT TESTIMONY OF

OF

MICHAEL SILVER

ON BEHALF OF

AMERITECH ILLINOIS

Dated: May 22, 2001

ISSUES

TDS-32 TDS-190
TDS-41 TDS-196
TDS-163 TDS-197
TDS-167 TDS-201
TDS-189

**DIRECT TESTIMONY OF MICHAEL D. SILVER
ON BEHALF OF AMERITECH ILLINOIS**

Q. Please state your name and your business address.

A. My name is Michael D. Silver, and my business address is 350 N. Orleans, Chicago, IL 60654.

Q. Please summarize your education.

A. I received my B.A. and M.A. degrees in Economics from Eastern Illinois University.

Q. Who is your current employer and in what position are you employed?

A. I am employed by SBC Communications, Inc. as Associate Director of Industry Markets.

Q. Please briefly summarize your work experience.

A. I was employed by Centel Corporation from 1979 through 1985. While there I had various regulatory responsibilities, including revenue requirements, separations, and capital recovery. In January, 1986, I moved to NYNEX Service Company, where I was responsible for federal access issues. I represented NYNEX on an industry team charged with revising FCC rules and regulations related to separations and access. In March, 1987, I joined Ameritech. Since then, my responsibilities have included coordination of federal access filings; service cost development; acting as a primary interface between Ameritech and other local exchange carriers in the Ameritech region; and supporting access reform as it applies in the five states in Ameritech's region. In January 2000, I was named Product Manager for Feature Group D Access services for the 13-state SBC region. I moved into my current role, as Associate Director of Industry Markets in April 2000.

1 **Q. Have you previously testified before any regulatory agencies?**

2 A. Yes, I have testified before a number of state agencies, including this one.

3 **Q. What is the purpose of your testimony?**

4 A. The purpose of my testimony is to support Ameritech Illinois' ("Ameritech") positions on
5 certain issues in this arbitration concerning Unbundled Network Elements (UNEs) and
6 Resale. In particular, I will address arbitration issues TDS-32, 41, 163, 167, 189, 190,
7 196, 197, and 201.

8 **ISSUE TDS-32, APPENDIX UNE §§ 2.11-2.18**

9 **Should the Agreement provide for processes related to the ordering of UNEs as shown [in**
10 **Appendix UNE §§ 2.11 through 2.18]?**

11 **Q. What is your understanding of this issue?**

12 A. As I understand it, TDS proposes that the Agreement include language specifying the
13 ordering procedures for UNEs. TDS's language is unnecessary and improper, however,
14 principally because such procedures have been covered in this Commission's OSS
15 proceeding (Docket No. 00-0592).

16 **Q. Why is TDS's proposal inappropriate?**

17 A. In the first place, it is improper for TDS to try to unilaterally set procedures when the
18 Commission has already considered these issues as part of a generic docket, and has
19 issued its Order. TDS had its opportunity to participate in this Commission's generic
20 OSS proceeding, and it should abide by the results of that proceeding.

21 This Commission has ruled on the numerous OSS issues brought before it in Docket 00-
22 0592, and Ameritech is abiding by those rulings. It would not be fair to change
23 procedures so soon after they were resolved, nor would it be fair or beneficial to anyone

1 to have two sets of procedures, one for TDS and one for other CLECs. Ameritech uses
2 standardized systems and procedures to ensure consistent and efficient treatment of all
3 orders. Ameritech's systems are not capable of handling different ordering procedures
4 for each individual CLEC. A separate set of procedures for TDS orders would lead to
5 inefficiency, error, and discriminatory treatment between carriers.

6 **Q. Can you elaborate as to some of the specific procedures TDS proposes?**

7 **A.** Yes. To take the most prominent examples (which are not exclusive):

- 8 1. TDS's proposed sections 2.16 and 2.17 of the UNE Appendix refer to procedures
9 related to Ameritech's facilities modification process ("FMOD"). The procedures
10 for that process have already been laid out in the Accessible Letter (CLECAM01-
11 140) issued on May 14, 2001 (schedule MDS-1). This Accessible Letter details
12 Ameritech's commitment to abide by the FMOD policy as agreed to in the April
13 CLEC User Forum ("CUF"). As TDS's witness Mr. Kaatz points out (in his
14 direct testimony at p.12), Ameritech has agreed to implement the FMOD policy in
15 all five states, and the FMOD process continues to be discussed and revised based
16 on input from CLECs in the CUF. There is no need to either duplicate those
17 procedures or create new ones in this agreement.
- 18 2. TDS's proposed section 2.18 incorporates the language verbatim from the
19 Stipulation accepted by the Public Service Commission of Wisconsin in Docket
20 No. 6720-TI-160-U, to which TDS and Ameritech Wisconsin were parties. The
21 time frames laid out in TDS's proposed language also tracks with the time frames
22 required by this Commission in Docket 00-0592. Once again, there is no need to
23 include this language in the agreement when the Commission has already issued a
24 generic order that covers Ameritech's requirements.
- 25 3. TDS's proposed sections 2.13 and 2.15 attempt to specify the timing and content
26 of Firm Order Confirmation notices, and of the rejection notices Ameritech sends
27 to CLECs when it returns incorrect or improper orders for correction. As for
28 timing, Ameritech has already established detailed standards, as part of its
29 performance measures which have been referenced in the Performance
30 Measurement Appendix, Section 14.1, of the interconnection agreement at issue
31 in this arbitration. Meanwhile, the content of such notices is already specified by
32 industry standards, which Ameritech applies on a non-discriminatory basis to all
33 carriers. Notably, one aspect of the Commission's order in the OSS docket,
34 No. 00-0592, is Ameritech's plan to implement version 4 of the industry standard
35 Local Service Ordering Guideline. Ameritech should not now be forced to create

new custom formats for TDS, nor should it be required to provide faster service to TDS than to other carriers.

4. Ameritech offers a "single point of contact" ("SPOC") for purposes of problem resolution at its Local Service Center, and another point of contact at its Local Operations Center ("LOC"). TDS wants Ameritech to offer another SPOC in its Hi-Cap center, which would require Ameritech to set aside further personnel for this function. The Hi-Cap center does not currently have the staffing that would be required to dedicate a single point of contact to every customer that deals with the Hi-Cap center. Whereas our the-LOCs serves only CLECs, our the-Hi-Cap centers serves CLECs and IXC. And it would be unfair to provide a SPOC to TDS at the Hi-Cap center without providing a SPOC for all other CLECs and IXCs as well ~~this service to TDS alone~~. It should be noted TDS, as well as all other CLECs doing business with Ameritech, have been provided an escalation list which they may use to escalate any problems they may encounter. It is not as if TDS does not have any avenues to pursue if it is encountering a problem in the Hi-Cap center.

Q. In the Wisconsin Arbitration between Ameritech and TDS, what was the outcome on Issue TDS-32?

A. For the SPOC issue, the Wisconsin Panel said:

TDS proposes that Ameritech assign a single staff member to address TDS service issues related to high capacity services. The Panel believes the process of staff assignments within SBC/Ameritech is a matter within the business judgment of the company. The Panel does not believe it is appropriate to manage Ameritech's hiring and staffing decisions.

For the other sections covered under Issue TDS-32, the Wisconsin Panel found:

Sections 2.13, 2.14 and 2.15. The Panel is concerned that this issue has the potential of undermining the orders the PSCW has adopted and will adopt in docket 6720-TI-160. That docket was established to create a common approach to a variety of issues related to provision of interconnected local service. There is an extensive record in that proceeding on these issues.

The Panel adopts the language as proposed by Ameritech. The Panel will defer to the intervals, performance measures, testing procedures, and other decisions of the PSCW in docket 6720-TI-160.

Sections 2.16 and 2.17. For the reasons stated above in Issue TDS-28, the Panel awards the language proposed by Ameritech.

1 Sections 2.18. This provision also concerns a matter addressed pending
2 before the PSCW in docket 6720-TI-160. For the reasons discussed
3 above, the Panel adopts the language proposed by Ameritech.

4 **Q. On page 17 of Mr. Kaatz's testimony, he says TDS's proposed language in UNE**
5 **appendix sections 2.11 through 2.18 should be accepted because it was in the first**
6 **generation interconnection agreement between the two companies. Do you agree?**

7 A. No. Simply because language was in the earlier agreement does not make it appropriate
8 in this agreement. If that were the case, there would be no need to go through this
9 process to establish a new agreement. Situations change, and most of the language being
10 proposed by TDS in these sections is covered by the OSS docket in Illinois or by generic
11 policies put forth by Ameritech in concert with CUF.

12 **Q. On page 5 of Mr. Kaatz's testimony he makes the comment "Ameritech has shown**
13 **in the past an inability to provide these basic functions to TDS Metrocom and other**
14 **CLECs as witnessed in the OSS collaboratives." His statement is in reference to**
15 **"definitions, standards, and processes used by the parties when ordering unbundled**
16 **network elements (UNEs)." How do you respond to this charge?**

17 A. I am not certain what Mr. Kaatz is referring to, because he did not provide any details.
18 Ameritech has had standards, processes, and associated definitions in place for ordering
19 UNEs since we began offering UNEs to our competitors. As always, Ameritech is bound
20 by rules set forth by the FCC and this Commission, and performance standards have been
21 put into place to judge how well Ameritech is meeting its obligations.

22 **Q. How should the Commission rule on this issue?**

23 A. The Commission should adopt Ameritech's proposed language rather than TDS's
24 proposals. As stated above, these procedures have been addressed either in this
25 Commission's OSS docket or policies negotiated in the context of the CUF. There is no
26 need to include these procedures in an interconnection agreement. Furthermore, to do so
27 could create a significant problem for Ameritech's systems. It is unreasonable to think

Ameritech's systems have the capability to accommodate multiple sets of the same procedures.

ISSUE 41, APPENDIX UNE § 5.2.1

What is the appropriate scope of the Bona Fide Request process?

Q. What is your understanding of this issue?

A. This issue concerns TDS's proposed language in Section 5.2.1 of the Appendix UNE. TDS is proposing language referencing Ameritech's Facilities Modification Process, and it is Ameritech Illinois' position that such language should not be included in the interconnection agreement.

Q. What is the Facilities Modification (FMOD) Process?

A. The FMOD process makes the same facility modifications available to CLECs as Ameritech Illinois performs to provision retail service requests for its end users. The FMOD process reduces the number of UNE loop orders rejected because facilities are not readily available to provision the requested UNE loop. There are three categories of modifications: simple, complex, and new-build. *Simple modifications* are performed automatically with no additional cost to the CLEC. *Complex modifications* require a negotiated due date to allow for engineering, construction, equipment installation as required and authorization of expenditures, if appropriate. *New-build* scenarios also require a negotiated due date and do not follow the normal FMOD ordering flow. Orders for Unbundled Network Elements where no facilities exist are sent back to the CLEC with a notice requesting that the CLEC order services to the new location utilizing the current retail construction policies relating to new buildings, business, and residential developments.

1 **Q. Why did Ameritech develop the Facilities Modification Process?**

2 A. Ameritech Illinois developed the FMOD process to proactively work with CLECs to
3 reduce the number of CLEC UNE orders canceled due to lack of facilities and to provide
4 timely communications to CLECs regarding the status of their orders. However, as
5 discussed below, the FMOD process is not designed as a catch-all process to cover all
6 non-standard UNE loop and transport orders.

7 **Q. Does the FMOD policy apply to all CLECs?**

8 A. Yes. The FMOD Policy is a generic policy that applies to all five states, including
9 Illinois, within the Ameritech region. As stated above, the policy is continuously being
10 reviewed in the CUF, and CLECs are notified of the most current version via the
11 Accessible Letter practice. As indicated above, the most current version of FMOD was
12 issued on May 14, 2001 in Accessible Letter CLECAM01-140 (Schedule MDS-1 hereto).

13 **Q. Has the FMOD Policy been addressed in any proceedings in Illinois?**

14 A. Yes, as TDS witness Jackson notes on page 13 of his direct testimony, this Commission
15 addressed the relationship between the BFR process and the FMOD policy in the
16 SCC/Ameritech Illinois arbitration. In that docket (00-0769) the Commission noted the
17 following (at page 19 of its Arbitration Award):

18 Ameritech's proposed language requires SCC to use the BFR process
19 when SCC is requesting: 1) an item that the FCC has not identified as a
20 UNE; 2) an item that the FCC has identified as a UNE but that Ameritech
21 does not currently offer, i.e. the element does not exist in Ameritech's
22 network; and 3) an item that the FCC has identified as a UNE and that
23 Ameritech currently offers, but does not exist at the location in
24 Ameritech's network where SCC wants it. The Commission finds this
25 proposal to be reasonable.

1 **Q. How does that ruling relate to this arbitration?**

2 A. As noted in the Commission's decision in the SCC arbitration, the BFR process is not
3 limited to items that the FCC has not identified as UNEs. The Commission found that
4 Ameritech Illinois' BFR process also covers items the FCC has identified as UNEs but
5 that Ameritech does not currently offer because the element does not exist in Ameritech's
6 network; and items that the FCC has identified as UNEs and that Ameritech currently
7 offers, but that does not exist at the location in Ameritech's network where the CLEC
8 wants them.

9 **Q. Is there any reason for the Commission to reach a different conclusion in this**
10 **arbitration?**

11 A. No.

12 **Q. What was the decision on this issue in the TDS/Ameritech Wisconsin arbitration?**

13 A. The Wisconsin Panel rejected the FMOD language proposed by TDS, and accepted
14 Ameritech's proposed language.

15 **Q. How should the Commission rule on this issue?**

16 A. The Commission should reject TDS's proposed language for Section 5.2.1 of the
17 Appendix UNE because TDS's proposed language improperly attempts to expand the
18 scope of the FMOD Policy to incorporate situations covered by the BFR process.
19 Additionally, Ameritech continues to work with the industry to define the scope of the
20 FMOD Policy, and there is no need to reference the FMOD Policy in this agreement.

1 **ISSUE TDS-163 (RESOLVED)**

2 **Should TDS be limited to providing resale services only according to Ameritech's retail**
3 **tariffs and rules for resale?**

4 **Q. What is your understanding of this issue?**

5 A. The first thing to recognize about this issue is that it has not been stated correctly. The
6 issue as stated is, "Should TDS be limited to providing resale services only according to
7 Ameritech's retail tariffs and rules for resale?" But the actual disputed contract language
8 does not have anything to do with any limitation on TDS's resale of services. Rather, it
9 has to do with the terms and conditions on which TDS buys services from Ameritech.

10 **Q. What is the disputed contract language?**

11 A. The language is in subsection 3.1 of the Appendix Resale. To show the parties'
12 disagreement, I quote the redlined version of section 3.1 (the italicized language is
13 proposed by Ameritech and opposed by TDS):

14 Except as otherwise expressly provided herein, for Telecommunications
15 Services included within this Appendix that are offered by **SBC-**
16 **13STATE** to **SBC-13STATE's** End Users through tariff(s), *the rules and*
17 *regulations that apply to **SBC-13STATE's** End Users pursuant to **SBC-***
18 ***13STATE's** retail tariff(s) shall apply equally when the services are sold*
19 *to CLEC by **SBC-13STATE**, with the exception of any tariff resale*
20 *restrictions; provided, however, any tariff restrictions on further resale by*
21 *the End User shall continue to apply. Use limitations shall be in parity*
22 *with services offered by **SBC-13STATE** to its End Users.*

23 As you can see, the italicized language does not say anything about the rules and
24 regulations when TDS resells services; it only addresses the rules and regulations when
25 TDS buys the services from Ameritech.

1 **Q. What is the purpose of the italicized language?**

2 A. The Telecommunications Act of 1996 requires Ameritech to offer to TDS at wholesale
3 rates any telecommunications service that Ameritech provides at retail to its end user
4 subscribers. Generally, the telecommunications services that Ameritech sells at retail are
5 sold pursuant to tariff, and Ameritech's retail tariff includes some rules and regulations
6 that pertain to the services when they are sold at retail. Ameritech's proposed language
7 in section 3.1 merely provides that those rules and regulations apply to TDS in the same
8 manner as they do to Ameritech's retail customers.

9 **Q. Is there anything in Ameritech's proposed language that puts limitations on how**
10 **TDS provides service to its customers?**

11 A. No, this language only applies to TDS's purchase of the services from Ameritech. If
12 TDS chooses not to apply the same rules and regulations to its end users, that is TDS's
13 decision. However, that choice does not absolve TDS itself from being bound by the
14 same rules and regulations as apply to Ameritech's retail customers.

15 **Q. If Ameritech's proposed language were excluded from the agreement, what would**
16 **the result be?**

17 A. In the first place, it would distort the basic concept that TDS is supposed to be buying the
18 same services as Ameritech sells to its retail customers. The 1996 Act entitles TDS to
19 buy the services at wholesale prices, and to make a profit by reselling the services at
20 retail. At least as I understand it, though, the services TDS obtains from Ameritech for
21 resale are supposed to be the same in all respects, except price, as the services Ameritech
22 provides at retail -- and that includes the terms and conditions (but again, not the price) at
23 which Ameritech sells the service at retail.

1 When Ameritech arbitrated this issue with TDS in Wisconsin, the Wisconsin Panel
2 decided the issue in Ameritech's favor for that reason. As the Panel said,

3 "It is the Panel's understanding of resale that it involves the purchase by a
4 CLEC of a service offered to an ILEC's retail customer at a discounted
5 price with the ability to resell that service to the CLEC's own customers.
6 The language proposed by Ameritech emphasizes that, except for
7 prohibitions on resale itself, the same tariffed restrictions on what
8 Ameritech's retail customer are allowed to do with the service will apply
9 to what TDS . . . can do. . . . The Panel agrees with Ameritech's point
10 that if TDS were to purchase a service that Ameritech provides to its retail
11 customers but is not bound by the same terms that Ameritech imposes on
12 its retail customers, it would be purchasing a different service than the one
13 Ameritech offers through its retail tariffs."

14 **Q. Is there any other reason that Ameritech's language should be adopted.**

15 **A.** Yes. Ameritech's language is not only consistent with the idea of what resale means
16 under the 1996 Act, but is also consistent with the basic idea of competition that the 1996
17 Act is supposed to promote. Removing this language would provide TDS with an
18 obvious and unfair competitive advantage in the retail market, because it would enable
19 TDS to resell what are supposed to be the same services it is obtaining from Ameritech,
20 but free of the rules and regulations that apply to those services when Ameritech sells
21 them at retail, *with Ameritech, rather than TDS, bearing the burden of the "better deal"*
22 *TDS would be offering its customers.* As I said above, TDS is free to resell the services
23 to its customers on whatever terms and conditions it pleases. But if TDS chooses to
24 resell the services on terms or conditions that are more favorable to the end user than the
25 terms or conditions on which Ameritech sells the services, then TDS should have to bear
26 the cost of that choice. If TDS could buy the services from Ameritech free of the rules
27 and regulations that normally apply, then Ameritech would be bearing the cost of TDS's
28 choice of how TDS is going to compete in the marketplace. At least as I understand it,

1 that would be contrary to the purpose of the 1996 Act, which is supposed to put
2 competing carriers on an equal footing, not to give one competitor an unearned advantage
3 over others.

4 **Q. Doesn't the Telecommunications Act provide, in Section 251(c)(4)(B), that**
5 **Ameritech cannot impose unreasonable or discriminatory conditions or limitations**
6 **on the resale of telecommunications or services?**

7 A. Yes. What Ameritech is proposing, however, is not a condition or limitation on resale,
8 let alone an unreasonable or discriminatory limitation; the proposal is simply that there be
9 an even playing field. As the Wisconsin Panel found in its Arbitration Award, section 3.1
10 is not "a restriction on resale as much as a provision specifying what resale means."

11 **Q. How should the Commission rule on Issue TDS-163?**

12 A. The Commission should adopt Ameritech's proposed section 3.1 for the Appendix
13 Resale.

14 **ISSUE TDS-167**

15 **Should there be penalties for violation of the agreement?**

16 **Q. What is your understanding of this issue?**

17 A. The parties agree that Resale Appendix subsection 3.12 will provide that if TDS is in
18 violation of any of its obligations under the Resale Appendix, Ameritech will notify TDS
19 of the violation in writing and TDS will have thirty days to correct the violation.
20 Ameritech believes subsection 3.12 should go on to set forth the measure of TDS's
21 liability to Ameritech in the event of any such violation, and proposes language that does
22 so. TDS contends that the proposed language should not be included in the agreement.

1 **Q. Based on your reading of Mr. Jackson's direct testimony (at page 26), what is your**
2 **understanding of why TDS is looking to strike language proposed by Ameritech in**
3 **resale appendix section 3.12?**

4 A. As I read Mr. Jackson's testimony, he is saying that Ameritech's proposed language is in
5 the nature of liquidated damages; that liquidated damages have to be in an amount which
6 the parties agree is a reasonable estimate of the damages that would be incurred in the
7 event of a breach of contract; and that since TDS has not agreed to the proposed
8 language, it cannot be a proper liquidated damages provision and therefore cannot be
9 included in the agreement.

10 **Q. How do you respond to that argument?**

11 A. I find it very unpersuasive. Even if it is true that a liquidated damages provision in a
12 normal commercial contract must be in an agreed amount, this is not a normal
13 commercial contract. *Everything* in a normal contract must be agreed by the parties.
14 Here, we are arbitrating an agreement that will contain many provisions on which the
15 parties have not voluntarily agreed, and the language we are arbitrating in Issue TDS-167
16 is no different from any other disputed language in that respect.

17 **Q. Isn't Mr. Jackson saying more than just that TDS hasn't agreed to the provision**
18 **and it therefore cannot be included in the agreement? Isn't he saying that the**
19 **amount Ameritech is proposing to charge TDS if TDS breaches its obligations under**
20 **the resale appendix is in fact not a reasonable estimate of the loss Ameritech would**
21 **incur?**

22 A. There is a hint of such an argument in Mr. Jackson's testimony, where he says that TDS
23 "does not agree that the provisions in Section 3.12 set forth by Ameritech set forth
24 contain such a reasonable estimation." But Mr. Jackson does not say anything about why
25 the proposed language is not reasonable – just that TDS does not agree that it is. If fact,

1 Ameritech's proposed language in Resale Appendix Section 3.12 is quite reasonable. It
2 says that if TDS violates its obligations under the Resale Appendix, Ameritech:

3 will bill CLEC a sum equal to the charges that would have been billed by
4 SBC-13STATE to CLEC or any Third Party but for the stated violation.

5 **Q. Why does Ameritech believe this language represents a "reasonable estimate of the**
6 **damages"?**

7 A. Actually, Ameritech is not proposing to estimate damages at all. Under Ameritech's
8 proposal, the amount TDS would pay Ameritech if it breached its obligations would be
9 the actual revenue Ameritech loses due to violations of the agreement by TDS. In that
10 respect, Ameritech's proposal is superior to (i.e., more precise than) a standard
11 liquidated damages provision.

12 **Q. Can you provide an example where Ameritech's proposed language would apply?**

13 A. Yes. In Section 3.4 of the Resale Appendix, the agreed upon language reads:

14 CLEC shall only resell services furnished under this Appendix to the same category of
15 End User(s) to whom SBC-13STATE offers such services (for example, residence
16 service shall not be resold to business End Users).

17 If a CLEC were to purchase residential service from Ameritech at the resale discount, and
18 then resell that service to a business at the residential rate in violation of section 3.4, then
19 the CLEC would be liable under Ameritech's proposed language for the amount that
20 Ameritech would have charged the CLEC if the CLEC had not violated section 3.4 – in
21 other words, for the discounted rate for business service. Thus, Ameritech's proposed
22 language puts the parties in the position they would have been in but for the violation.

1 **Q. How should the Commission rule on this issue?**

2 A. The Commission should adopt Ameritech's proposed language for the reasons I have
3 explained.

4 **ISSUE TDS-189**

5 **In cases of line sharing by two CLECs, can TDS and the other CLEC use Ameritech**
6 **splitters, equipment, cross connects or OSS systems to facilitate line sharing?**

7 **Q. What is your understanding of the issue?**

8 A. As I understand it, TDS maintains that Ameritech should be required to provide splitters,
9 cross connects and other equipment when ~~line sharing is taking place between two~~
10 CLECs share a line and Ameritech has no involvement with the end user. Ameritech
11 disagrees, and has proposed language for Section 4.5 of Appendix DSL that reflects that
12 position.

13 **Q. What is the basis of Ameritech's proposed language in Section 4.5 of Appendix**
14 **DSL?**

15 A. The language proposed by Ameritech is fully supported by rulings from the Eighth
16 Circuit and by the FCC's Orders as they relate to this issue, and by this Commission's
17 decision in Docket 00-0393.

18 **Q. How has the Eighth Circuit ruled?**

19 A. Under the Eighth Circuit's decision *IUB I and III*, Ameritech cannot be required to
20 provide new combinations of network elements. TDS's line splitting proposal would
21 improperly require Ameritech to separate currently combined UNEs and recombine those
22 UNEs with other facilities that are not UNEs (an Ameritech-owned splitter).
23 Specifically, TDS's proposal would require Ameritech to purchase and install the splitter

1 and to perform the physical work necessary to combine the splitter with the unbundled
2 loop and unbundled switching.

3 **Q. What rulings have the FCC and this Commission issued supporting Ameritech's**
4 **proposed language?**

5 A. Both agencies have issued orders that very strongly support Ameritech's position here.
6 Under the FCC's *Line Sharing Order* and *Texas 271 Order*,¹ and under this
7 Commission's decision in Docket 00-0393, Ameritech cannot be required to provide
8 access to the HFPL over the UNE-P when Ameritech is not the voice provider. These
9 decisions clearly hold that incumbent carriers are not required to provide splitters to any
10 CLECs, under any circumstances. Ameritech's position is strongly supported not only by
11 these two FCC Orders and by this Commission's decision in 00-0393, but also by the
12 FCC's most recent order on the matter, the January, 2001, *Line Sharing Reconsideration*
13 *Order*.

14 **Q. What did the FCC say in its *Line Sharing Reconsideration Order* relative to this**
15 **issue?**

16 A. The FCC was quite clear that the CLEC is responsible for providing the splitter when the
17 ILEC, Ameritech in this instance, does not provide the voice service. In paragraph 19 the
18 FCC said:

19 "incumbent LECs have an obligation to permit competing carriers to engage in line
20 splitting using the UNE-platform where the competing carrier purchases the entire loop

¹ *Deployment of Wireline Services Offering Advanced Telecommunications Capability and Implementation of Local Competition Provisions of the Telecommunications Act of 1996*, Third Report and Order CC Docket No. 98-147 and Fourth Report and Order CC Docket No. 96-98, 14 FCC Rcd 20,912 (1999) ("*Line Sharing Order*"); Memorandum Opinion and Order, Application by SBC Communications Inc., Southwestern Bell Telephone Company, and Southwestern Bell Communications Services, Inc. d/b/a Southwestern Bell Long Distance Pursuant to Section 271 of the Telecommunications Act of 1996 To Provide In-Region, InterLATA Services In Texas, 15 FCC Rcd 18354 (2000) ("*Texas 271 Order*").

1 and provides its own splitter.² For instance, if a competing carrier is providing voice
2 service using the UNE-platform, it can order an unbundled xDSL-capable loop
3 terminated to a collocated splitter and DSLAM equipment and unbundled switching
4 combined with shared transport, to replace its existing UNE-platform arrangement with a
5 configuration that allows provisioning of both data and voice services.³”

6 **Q. What did the Illinois Commerce Commission say about this issue in Docket 00-**
7 **0393?**

8 A. Among other things that the Commission said at pages 52-57 of its Order that support
9 Ameritech’s position here were that that “Ameritech cannot be required to provide new
10 combinations of network elements” and that “Ameritech Illinois is not required to
11 provide splitters under any circumstances.”

12 **Q. What concerns do you have with TDS’s proposed language in section 4.5 of**
13 **Appendix – DSL?**

14 A. Frankly I don’t understand the rationale behind TDS’s proposed language. It appears as
15 if TDS has mistakenly referenced Ameritech Wisconsin, and I presume they mean
16 Ameritech Illinois. They are also referencing a Wisconsin arbitration, and seem to be
17 proposing the results of that arbitration be binding on this arbitration. Ameritech objects
18 to any such proposal, and I know of no basis for automatically transferring the result of
19 an arbitration in one state to another state – especially where the second state has already
20 rejected the position that the proponent (TDS) is advocating.

² See *Texas 271 Order*, 15 FCC Rcd at 18515-16, para. 325; see also *Line Sharing Order*, 14 FCC Rcd at 20948, n.163 (contemplating arrangements with two competing carriers providing voice and data service on a single line).

³ *Texas 271 Order*, 15 FCC Rcd at 18515-16, para. 325. Similarly, a competing carrier could use unbundled loop and switching elements to provide voice and data service to an end user not already served via the UNE-platform.

1 **Q. How should the Commission rule on this issue?**

2 A. This Commission should accept Ameritech's proposed language, recognizing that
3 language is completely consistent with the decisions of the Eighth Circuit, the FCC, and
4 this Commission.

5 **ISSUE TDS-190**

6 **Should Ameritech be obligated to provision xDSL capable loops in instances where**
7 **physical facilities do not exist.**

8 **Q. What is the open issue between the parties?**

9 A. The issue concerns Section 4.6 of the Appendix DSL, and the issue as defined by the
10 disputed language does not match the above statement of the issue. The real issue, as
11 defined by the disputed contract language, has to do with whether the contract should
12 include references to Ameritech's FMOD, and that is the question that TDS witness
13 Jackson addresses in his testimony on Issue TDS-190, on page 27 of his direct testimony.
14 That is the question that I will address as well.

15 **Q. Should the FMOD Policy be referenced in the context of this agreement?**

16 A. No, as discussed in Issue 41 above, Ameritech has agreed to the FMOD Policy for all five
17 states. As also noted above, there is no reason to include any language relative to the
18 FMOD policy in this agreement. Ameritech's proposed language states that Ameritech is
19 not relieved of any obligation that Ameritech may have outside this Agreement to
20 provision such loops. This language gives TDS the ability to take advantage of the
21 FMOD Policy as appropriate, without worrying about a disconnect between language in
22 an individual agreement and a generic policy.

1 **Q. How did the Wisconsin Panel rule on this issue?**

2 A. Similar to Issue TDS-41, they found the FMOD language should not be included, and
3 accepted Ameritech's proposed language.

4 **Q. What was the rationale for the Wisconsin decision?**

5 A. I will quote from it, because I think it is instructive. In its decision on Issue TDS-190, the
6 Wisconsin Panel referred back to its decision on Issue TDS-28. On Issue TDS-28, the
7 Wisconsin Panel said this (Arbitration Award at pp. 35-36):

8 [T]he parties appear to agree with respect to the process with which
9 facilities will be modified to accommodate new and additional access to
10 UNEs The concern here is largely procedural. The agreements [i.e.,
11 the FMOD Policy] have been completed and adopted in another
12 proceeding. The record to support those agreements is largely found in
13 that proceeding. Incorporating the results of that proceeding into this
14 Agreement may create contractual enforcement privileges not intended in
15 the other proceeding. . . .

16 Ameritech argues that this approach [incorporating the FMOD
17 process into the Agreement] is confused and unnecessary. The Panel
18 agrees.

19 **Q. What do you find significant about the rationale for the Wisconsin decision on Issue**
20 **TDS-190?**

21 A. TDS seems to think that to the extent that Ameritech has committed to (or has been
22 required to commit to) the FMOD Policy, that commitment should be reiterated in the
23 parties' interconnection agreement. I disagree. The mere fact that Ameritech has
24 undertaken *in some other context* to do something (perhaps something that exceeds
25 Ameritech's obligations under the 1996 Act) is not a sufficient reason to import that
26 undertaking into an interconnection agreement. TDS has not made the case in this
27 proceeding that the FMOD process should be imposed on Ameritech or, more important
28 from a practical point of view, that the enforcement mechanisms associated with breach

of contract should be added to whatever enforcement mechanisms pertain to Ameritech's undertaking *outside this agreement* to conform with the FMOD Policy. As I read it, that is what the Wisconsin decision is saying.

ISSUE TDS-196

What should acceptance testing include?

Q. What is acceptance testing?

A. Acceptance testing is available as part of the provisioning process for one of the four basic steps in providing access to an xDSL capable loop. Those steps are:

1. ~~Loop qualification: the CLEC requests and obtains information from Ameritech to determine if any of the loops serving a particular address is capable of providing (or can be conditioned to provide) the type of xDSL service the CLEC wants to provide at that address.~~

2. ~~Ordering: the CLEC requests access to a loop or loops identified in Step 1, and requests conditioning as required.~~

3. ~~Acceptance Testing: before transferring the loop from Ameritech's switch to the CLEC's switch, Ameritech conducts a Dialtone/Automatic Number Identification ("DT/ANI") test to confirm the loop has a dialtone, and is set up to serve the correct telephone number.~~

The various steps involved in such testing are detailed in Section 8.3 of the DSL Appendix.

4. ~~The actual provisioning or "hot cut" of the loop.~~

Q. Does Ameritech perform "acceptance testing" of loops to be used for "line sharing," as opposed to stand-alone loops?

A. Not exactly. Ameritech is already providing POTS service on the low-frequency portion of such loops, ~~thus, there is no need to test dialtone.~~ Therefore, Ameritech generally does not dispatch a technician, and would not have one at the customer site to perform an acceptance test.

1 Instead, Ameritech has worked out a procedure with the CLEC community that provides
2 the necessary testing and avenues for trouble resolution on new line-sharing installations.
3 The agreed upon procedure is called Line-Sharing Turn-up Testing. Under this new
4 procedure, Ameritech will complete a series of steps to ensure the service order is
5 provisioned properly, and the shared loop is free of load coils. The technician first
6 verifies there are no load coils on the High Frequency Portion of the Loop ("HFPL").
7 Assuming the test indicates no loads, the technician installs all wiring and emits a tone on
8 the CLEC's CFA pair to verify the jumpers have been correctly run. The technician then
9 places a new protector and performs Automatic Number Identification (ANI) tests. By
10 performing these activities, central office technicians are assured they have wired the
11 correct telephone number to the correct line shared splitter ports and cable pair.
12 Assuming all tests are successful, then the central office technician completes his service
13 order and this completion is due by 5:00 p.m. on the day before the due date.
14 Any time after 5:00 p.m. on the day before the due date, the CLEC can independently test
15 (using any remote or physical tests available to the CLEC, including Mechanized Loop
16 Testing ("MLT")) the line shared loop and be assured that the central office work has
17 been correctly provisioned. MLT transmits a signal to verify that all of the connections
18 are made. If a signal is not heard, that indicates that there is a break in the connections at
19 some point on the route. Any service order not testing correctly will be referred to
20 Ameritech's Local Operations Center ("LOC") for immediate handling. Ameritech also
21 provides a 72 hour window for the CLEC to refer troubles to Ameritech's Local
22 Operations Center (LOC) for expedited resolution.

1 If, after the Line Sharing Turn-Up Test is completed, it is determined that the HFPL
2 service is provisioned correctly, the CLEC must either accept the loop, request further
3 conditioning if needed, or cancel the order. In any event, all service order charges apply.
4 This procedure has been accepted by the CLEC community and avoids their submitting
5 trouble reports and going through the normal repair process for newly completed line-
6 sharing orders.

7 The CLECs and Ameritech have agreed to jointly re-examine and assess these procedures
8 once the entire community has had some experience with the process, and to make
9 changes as necessary.

10 **Q. What is the open issue between the parties?**

11 A. The procedures for qualifying, ordering, and provisioning loops for advanced services
12 have been the subject of extensive discussion in the OSS collaboratives. The only issue
13 here is that TDS proposes language that would require acceptance testing to confirm the
14 "absence of load coils, excessive bridge taps, foreign voltage, grounds or other elements
15 that make the loop unsuitable" for xDSL traffic. Ameritech opposes that proposal.

16 **Q. What is the problem with TDS's position?**

17 A. By the time of acceptance testing, TDS should have already verified the absence of load
18 coils, excessive bridge taps, and other such impediments to data traffic, through the loop
19 qualification process. By using the loop qualification process, TDS can verify the loop's
20 suitability and determine the need for conditioning *before* the order is placed and the
21 parties begin work to provision it, thus making the overall process more efficient for all
22 parties. There is no need to perform a second qualification *after* the loop has already

1 been ordered, and it would be inefficient to let TDS do loop qualification work (which
2 could possibly lead to a change in the order or the work needed to complete it) *after*
3 placing the order and just before provisioning. Further, it would be improper to force
4 Ameritech Illinois to do conditioning work of the acceptance testing phase. That work
5 should already have been required and completed by that point.

6 Acceptance testing is not intended to replace the loop qualification function. Instead, it
7 was designed to provide verification that Ameritech has provisioned the requested loop in
8 accordance with its contractual obligations. TDS' proposed language goes beyond this
9 requirement by requiring acceptance testing confirm conditioning has been performed
10 even when TDS did not authorize it. A successful acceptance test should not be
11 dependent on confirming conditioning that was not requested or paid for. However, an
12 added benefit of the test is that TDS does have the opportunity to gather this type of
13 information about the loop as they perform the test and use the information as they
14 choose.

15 **Q. On page 31 of Mr. Lawson's direct testimony he says that Ameritech has not always**
16 **performed requested conditioning for TDS? How do you respond to that?**

17 **A. Up to now, requests for conditioning have been included in the comments section of the**
18 **LSR, and unfortunately, have not always been noted. In order to resolve this problem,**
19 **effective June 23, 2001, CLECs will use the ALBR field populated with "Y" and the**
20 **words Acceptance testing requested in the Remarks. This will enable those orders**
21 **requesting Acceptance testing to all be identified by the LOC and should solve the**
22 **problem Mr. Lawson notes.**

1 **ISSUE TDS-197**

2 **Should Ameritech be relieved of obligations to perform acceptance testing?**

3 **Q. What is the open issue between the parties?**

4 A. Ameritech has proposed language (section 8.3.5 of the DSL Appendix) that relieves it of
5 the obligation to perform acceptance testing if TDS does not provide a “live” response
6 within 10 minutes of the Ameritech technician’s call. TDS objects to that proposal, and
7 apparently takes the position that it can put technicians on hold indefinitely (or even fail
8 to answer the technician’s call in the first place) without consequence.

9 **Q. What is the basis for Ameritech’s position?**

10 A. An Ameritech technician must physically be present and on the telephone with a CLEC
11 representative when acceptance testing is being conducted. Ameritech’s technicians have
12 numerous orders to fill, and numerous facilities to test, at a variety of locations. They
13 cannot afford to wait for an answer, or stay on hold, indefinitely on each loop order. That
14 would prevent them from working on other installations or traveling to other locations
15 where their services are required, and it would needlessly delay the installation of service
16 for all carriers and their end users. Technicians should spend their time doing the job
17 they are trained and paid to do – provisioning and testing service – not waiting for
18 someone to pick up the phone.

19 **ISSUE TDS-201**

20 **What should Ameritech repair at no charge to TDS?**

21 **Q. What is the open issue here?**

22 A. Ameritech’s proposed language provides that it will repair, at no charge to TDS, defects
23 in xDSL-capable loops if (1) they would be unacceptable for POTS service, and (2) if the

1 ~~defect is they do not the result of from the~~ conditioning or modifying the design of the
2 loop ~~to TDS' specifications to carry data traffic~~. TDS's position is that Ameritech should
3 repair defects that result from such conditioning or modification, even if they would not
4 affect POTS service.

5 **Q. What is the basis for Ameritech's position?**

6 A. Ameritech should not bear the cost of defects created by loop conditioning or
7 modifications that are requested and specified by TDS. Ameritech's task is to implement
8 TDS's specifications, not to guarantee TDS has chosen the specifications wisely ~~they are~~
9 right.

10 **Q. Does this conclude your Verified Statement?**

11 A. Yes.

(BUSINESS PROCESSES) Unbundled Network Element Facility Modification & Construction Policy – Wisconsin Collaborative & CUF Impact, Issue 4.0, May 2001 – Illinois, Indiana, Michigan, Ohio, Wisconsin

Date: May 14, 2001

Number: **CLECAM01-140**

Contact: Ameritech Account Manager

Category: UNE

This Accessible letter is a clarification of **CLECAM01-096**, issued April 4th, 2001 as agreed to in the April CUF. This is effective immediately. The UNE facility Modification Policy is used in Ameritech. The update includes enhancements to the process, confirms previous commitments that became effective April 1, 2001, and provides miscellaneous corrections to clarify the text in the policy

More specifically, the revisions:

- 1) Update the Policy and Process Description to include the 24-hour timeframe for FMOD Form A that became effective April 1, 2001.
- 2) Clarify the Process Description to be consistent with the actual process flow and to delete the references to "non-compliance notifications" since this process is no longer applicable, (Process flow added for clarification)
- 3) Update the Policy to reflect the most recent "Hot-Cut Process"
- 4) Confirm the information provided in the December 2000 CLEC User Forum that CLECs have the option of retaining the original due date or supplementing the original order if a CLEC receives a Form D "Good News" on Due Date-1.
- 5) Modifications to Form B for clarity as requested by the CLEC User Forum

Questions regarding this process can be sent to the CUF mailbox through the fifth day after Accessible Letter is posted.

Update to the policy flow

The update to the process is explained here and listed in 4 below.

If a CLEC receives Form D on the day prior to due date for a Coordinated Hot Cut order and the order has been submitted on a cut sheet, the CLEC has two options:

- 1) If the original due date is still desired and the Form D has been received by the CLEC then the order will be scheduled as indicated on the cut sheet***
- 2) if a new due date is desired the CLEC should supplement the original order and the order will be assigned a new due date based on best available.***

Facilities Modification Telecommunications Process

Issue 4, May 2001

The following is an overview of the telecommunications process that will take place between a Competitive Local Exchange Carrier and SBC/Ameritech under the new UNE Facilities Modification Policy effective 03/27/01. (Detailed process descriptions below)

The overall goal of the telecommunications process guidelines:

- Establish clear, concise, and timely notifications of UNE order status to CLEC and SBC/Ameritech organizations working to provision UNE orders

1. CLEC issues order for an Unbundled Network Element (UNE) to SBC/Ameritech Local Service Center (LSC) <ul style="list-style-type: none"> • LSC issues service order through company systems to Network Services • LSC sends a Firm Order Confirmation (FOC) concerning the CLEC UNE Loop order 	<u>FOC is issued by LSC consistent with existing FOC intervals</u>
2. Network Operations begins UNE order provisioning processes <ul style="list-style-type: none"> • Network operations provisioning processes evaluate the availability of facilities • Voice Grade and Digital Loop provisioning processes • Digital Unbundled Transport provisioning processes • Network operations evaluation finds that a "No Facilities Available" situation exists 	<u>Evaluations begins after initial FOC</u>
1. If a potential "no facilities" situation is determined: <ul style="list-style-type: none"> • LSC sends <u>Facility Modification Delay Notification</u>¹ (Form A) containing the following message: <i>This notification is alerting you of a potential delay occurring for the above order(s). The order(s) may require work beyond Simple Modifications. More specific details will be provided within 72 business hours.</i> <p>Delay Notification <u>does not</u> contain a due date</p>	<p>Target time to deliver <u>Facility Modification Delay Notification</u> is 24business hours² from initial FOC</p>
4. If facilities can be made available through a simple modification, which was determined after the CLEC received Form A, CLEC will be notified through a <u>Facility Update Notification</u> (Form D). If a CLEC receives Form D on the day prior to due date for a Coordinated Hot Cut order and the order has been submitted on a cut sheet, the CLEC has two options: <p>- If the original due date is still desired and the Form D has</p>	<p>Target time to deliver <u>Facility Update</u> is day prior to due date</p>

¹ Currently Forms A-E are sent via fax and e-mail. SBC/Ameritech has been able to send these forms via email to those CLEC's that supplied an e-mail address to their Account Manager. SBC/Ameritech is currently unable to send these forms via EDI and does not have a date by which we will be able to do so.

² Business hours are defined, for purposes of this policy, as continuous hours starting Monday 8:00am CT and ending Friday 5:00pm CT, excluding holidays.

<p><i>been received by the CLEC then the order will be scheduled as indicated on the cut sheet</i></p> <p><i>- If a new due date is desired the CLEC should supplement the original order and the order will be assigned a new due date based on best available.</i></p>	
<p>5. Network operations determines complex modification classification or that construction is needed to provision UNE</p>	<p>Target time to deliver <u>Complex Facility Modification Notification</u> is within 72 business hours of <u>Facility Modification Delay Notification</u></p> <p>CLEC accept/reject</p>

³ Inclusion of the AM 40881 in the attachments has been included in the policy based on CLEC's requests

	<p>response required in 10 business days⁴</p> <p>Target time to deliver <u>Integrated Digital Loop Carrier (IDLC) and Remote Switching Unit (RSU) Notification</u> is within 72 business hours of <u>Facility Modification Delay Notification</u></p> <p><u>IDLC/RSU quotes are targeted for 15 to 21 days of request, but no later than 30 days of request</u></p> <p><u>CLEC required to respond within 10 business days</u></p> <p>Target time to deliver <u>New Build Notification</u> is within 72 business hours of <u>Facility Modification Delay Notification</u></p>
<p>6. CLEC evaluates Facilities Modification Required Message and sends Facilities Modification Accept/Reject message to LSC</p> <p>If CLEC grants permission to proceed LSC sends positive</p>	<p><u>CLEC has 10 business days to respond after receiving the quote for charges</u></p>

⁴ The interval for CLECs to respond to notifications has been increased based on CLECs requests

<p>confirmation to Network Operations to proceed with modifications</p> <ul style="list-style-type: none">• Network Operations implements Facilities Modification Plan• CLEC UNE order is completed on the due date based on interval established in Facilities Modification Required Message <p>If CLEC rejects offer to modify existing facilities, LSC cancels CLEC UNE order</p>	
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Attachments



"FMOD Process Flow
Issue 4.doc"



"FMOD Process
Flow(Graphic)Issue 4



"FMOD Form Letters
Issue 4.doc"